IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION N0.8413 OF 2005

Shri Rohit Premji Veera .. ..Petitioner

Versus

Anant Ganesh Petkar & ors. .. ..Respondents

Mr.Amit Borkar for petitioner

Mr.S.M.Kamble for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 18TH JANUARY 2006.

P.C.:

1. Heard the learned counsel for both the parties.

2. Rule, rule made returnable forthwith by consent.

3. The petition is filed against the order passed by the trial court dated 27th August, 2005 in Regular Civil Suit No.1217 of 1984 below Exh.391 which was for amendment of the pleadings made by the plaintiff.

4. On perusal of the record, it is seen that the plaintiff sought amendment in order to introduce two incidents of the alleged nuisance committed by the defendant or his servants etc. One aspect of the nuisance was alleged that the latrine, which is exclusively for the purpose of use of the tenants was being used by the servants and others of the defendants and therefore, that was the element of nuisance required to be pleaded. The second aspect of the amendment was pertaining to the parking of the cycles and obstruction caused in the passage adjacent to the suit premises by the servants of the defendants.

. The learned trial judge rejected the amendment application with regard to the use of latrine, but allowed the amendment of the plaint with regard to the element of nuisance to the extent of use of passage by adjacent to the suit premises by defendants' servants for the purpose

of parking cycles and obstructing the passage.

5. It was submitted on behalf of the petitioner that once the part of the amendment sought was rejected pertaining to the use of latrine on the ground that it was not part of the suit premises, then the subsequent part of the amendment sought for should also have been rejected. In my considered view, by no stretch of imagination it can be said that both the elements of nuisance are interlink and therefore, suffice it to say that amendment application which is partly allowed appears to be properly adjudicated so far as grant of amendment is concerned in respect of alleged obstruction and use of the adjacent passage for the purpose of parking of cycles of defendants' servants. Needless to mention that the record also supports the order of the lower court showing that the amendment allowed is very much relevant and necessary for the effective adjudication of the allegations made by the plaintiff.

6. In view of this aspect, without further elaboration I must note that petition is devoid of any merits and therefore, stands dismissed in limine with no order as to costs.